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2 September 2019

Dear Ms Kwon,

<b>Application No.</b>	1-7038525149
<b>Applicant</b>	Kims Club Australia Pty Ltd
<b>Application for Licence name</b>	Packaged Liquor Licence Hanaro Mart
<b>Trading hours</b>	Monday to Friday 10:00 am to 9:59 pm Saturday and Sunday 10:00 am to 9:30 pm
<b>Premises</b>	Shop 16, Strathfield Plaza 11 The Boulevard Strathfield NSW 2135
<b>Legislation</b>	Sections 3, 11A, 12, 29, 30, 31, 40, 45 and 48 of the <i>Liquor Act 2007</i> (NSW)

**Decision of the Independent Liquor and Gaming Authority  
Application for a Packaged Liquor Licence – Hanaro Mart, Strathfield**

The Independent Liquor and Gaming Authority considered the above application at its meeting on 17 July 2019 and pursuant to section 45 of the *Liquor Act 2007* (NSW) decided to **refuse** the application.

If you have any questions, please contact [beatrice.pitpaiaac@liquorandgaming.nsw.gov.au](mailto:beatrice.pitpaiaac@liquorandgaming.nsw.gov.au).

Yours faithfully

Philip Crawford  
Chairperson  
For and on behalf of the Independent Liquor and Gaming Authority

## Statement of reasons

### Decision

1. On 2 November 2018 the Independent Liquor and Gaming Authority (“the Authority”) received from Kims Club Australia Pty Ltd (“the Applicant”), through Liquor and Gaming New South Wales (“LGNSW”), an application for a new packaged liquor licence (“Application”) in respect of premises located at Shop 16, Strathfield Plaza, 11 The Boulevard, Strathfield New South Wales (“NSW”) 2135 (“Premises”) to be known as *Hanaro Mart*.
2. The Authority has considered the matter at its meeting on 17 July 2019 and has decided to **refuse** the Application pursuant to section 45(1) of the *Liquor Act 2007* (NSW) (“Act”).
3. In reaching this decision, the Authority has had regard to the material before it, the legislative requirements under sections 3, 11A, 12, 29, 30, 31, 40, 45 and 48 of the Act and relevant provisions of the *Liquor Regulation 2018* (NSW) (“Regulation”).

### Material considered by the Authority

4. The Authority has considered the Application, accompanying Community Impact Statement (“CIS”), and all submissions received in relation to this Application.
5. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding this decision, as all parties required to be notified of the Application were provided with the opportunity to make submissions.
6. In accordance with its *Guideline 6*, the Authority has also had regard to relevant LGNSW liquor licensing records and data published by Bureau of Crime Statistics and Research (“BOCSAR”), NSW Department of Health and Australian Bureau of Statistics (“ABS”).
7. A list of the material considered by the Authority is set out in Schedule 1.

### Legislative framework

8. The Authority has considered the Application in accordance with the following provisions of the Act:
  - (a) Section 3: Statutory objects of the Act and relevant considerations.
  - (b) Section 11A: 6-hour closure period.
  - (c) Section 12: Standard trading period.
  - (d) Section 29: Authorisation conferred by packaged liquor licence.
  - (e) Section 30: Liquor sales area required if bottle shop is part of another business activity.
  - (f) Section 31: Restrictions on granting packaged liquor licences.
  - (g) Section 40: Minimum procedural requirements for a liquor licence application to be validly made.
  - (h) Section 45: Criteria for granting a liquor licence.
  - (i) Section 48: Requirements in respect of a CIS.
9. An extract of these provisions is set out in Schedule 2.

## Key findings

10. Section 31(1) of the Act provides that the Authority must not grant a packaged liquor licence for premises that comprise a general store unless the Authority is satisfied that:
  - (a) in the neighbourhood of the premises concerned, no other take-away liquor service is reasonably available to the public, and
  - (b) the grant of the licence would not encourage drink-driving or other liquor-related harm.
11. Section 31(3) defines a general store to mean *a convenience store, mixed business shop, corner shop or milk bar that has a retail floor area of not more than 240 square metres and that is used primarily for the retail sale of groceries or associated small items.*
12. The Authority notes that this is an Application for a new packaged liquor licence to be located within a small area, some 4.86 square metres, of an Asian grocery shop which commenced trading in 2006 within the Strathfield Plaza Shopping Centre.
13. Limited information has been provided in regards to the types of products that are for sale from the business that forms the licensed Premises. However, the photographs of the store frontage of the Hanaro Mart Premises, provided by the Applicant on 15 February 2019, in addition to the description of the proposed licenced premises in the Application and CIS as an “Asian grocery shop” establish that the proposed Premises constitutes a mixed business.
14. The Authority is prohibited from granting a packaged liquor licence in respect of this general store/mixed business if the retail floor area of the Premises is less than 240 square metres.
15. The Authority notes that in the Applicant’s 21 February 2019 submission, the Applicant advised that the “current [l]ease states the total retail supermarket floor area is 185 square metres”.
16. However, *after* the section 31 restrictions were brought to the Applicant’s attention by licensing staff, the Applicant made a further submission dated 19 June 2019. Ms Michelle Kwon of PSK Legal, advises that PSK are “instructed to apologise” for “wrongly informing” the Authority of the size of the “total retail floor area”. The Applicant advises that this “should have been 256 square metres”.
17. The Applicant submits that the area identified in the February 2019 correspondence was “for display and counter areas only” and “did not include the storage areas of the Premises”. Attached to this submission are diagrams from Hill and Blume architectural surveyors dated 19 June 2008 and 18 May 2015, which refer to areas described as “Hanaro” and “Storage Room 1”, and “Storage Room 2”. Also provided is a diagram marked “A” extracted from the original lease.
18. The Applicant submits that the “retail area” in “regular and proper usage” of that term, includes “storage as well as display and counter areas for commercial premises” and that the “total retail area” of the Premises is as follows:
  - Main Area: 185 m<sup>2</sup>
  - Storage 1: 25.5 m<sup>2</sup>

Storage 2: 11 m2

Storage 3: 10 m2

Storage 4: 24.88 m2

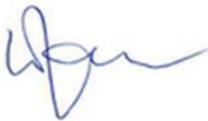
TOTAL: 256.38 m2

19. The Authority has considered the diagram of the licensed Premises provided by the Applicant on 26 June 2019 alongside the Applicant's 19 June 2019 submission which was accompanied by diagrams from Hill and Blume architectural surveyors, a diagram marked "A" extracted from the original lease and an invoice issued from Memocorp Australia Pty Ltd.
20. The invoice issued from Memocorp Australia Pty Ltd to Kims Club Australia Pty Ltd dated 15 June 2019 for rent payable for the month of July 2019 refers to the following items "Rent - Speciality" (the major rental charge), plus five separate items of considerably less value described as "Storeroom Rent" and an item for payment of water charges for what is described as "4<sup>th</sup> Storeroom - June 2019".
21. It is apparent from the diagram accompanying the 26 June 2019 submission that there is one storage area that falls within the proposed licensed premises/supermarket boundary. It is apparent that this area falls within what the Applicant now describes as the "Main Area" of the supermarket in the 19 June 2019 submission.
22. The Authority is not satisfied that the areas identified in the 19 June 2019 submission as "Storage 1", "Storage 2", "Storage 3" and "Storage 4", which are outside the supermarket and apparently located in another part of the Shopping Centre, form part of the "retail floor area" of the Hanaro Mart general store. These are separate, external areas that cannot reasonably be said to form part of the relevant licensed premises used primarily for the retail display and sale of groceries or associated small items.
23. The Authority finds that the "retail floor area" of this general store comprises, at the *most*, the area identified in the Applicant's submission dated 19 June 2019 as the "Main Area" of the supermarket, which amounts to 185 square metres.
24. Since the Premises is not more than 240 square metres in scale, a packaged liquor licence cannot be granted unless, *inter alia*, the Authority is satisfied that in the neighbourhood of the Premises, no other takeaway liquor service is reasonably available.
25. In *Armstrong v Edgecock* (1984) 2 NSWLR 536 Glass JA [at 542] stated:

The extent of the area from which the premises, if licensed, would draw their custom is now an irrelevant consideration. On the other hand, it would be relevant to consider topographical and geographical features, transport facilities, communal activities and residential aggregations in determining the extent of the neighbourhood....Two attributes can I think be predicated of the neighbourhood test. It will denote an area smaller than the trading area which has hitherto been the goal of magisterial determination. Secondly, the neighbourhood of the premises will remain constant regardless of the nature or scale of the trading conducted in them.
26. In *Morgan v Goodall* (1985) 2 NSWLR 655 the New South Wales Supreme Court Court of Appeal accepted the reasoning in *Armstrong v Edgecock* where [at 657] Samuels JA stated:

What constitutes a 'neighbourhood' for present purposes was considered at some length in *Armstrong v Edgecock* [1984] 2 NSWLR 536. It is clear from that case, and in particular from what was said by Hutley AP (at 541 and 542) that it means a territorial areas displaying certain common topographical and social features and enjoying common facilities which enable it to be regarded as a community. Section 45(2) requires the area to be identified which satisfies the description 'the neighbourhood of the premises to which the application related'. Hence those premises become the focal point of the inquiry, and influence (if they do not determine) the fixing of the boundaries of the neighbourhood; and it is the needs (for liquor) of the public in that neighbourhood which must then be considered. It is clear, therefore, that 'neighbourhood' means an area defined according to the relevant tests and by reference to the position of the premises.

27. LGNSW licensing information indicates that a Beer Wine Spirits liquor store (licence number LIQP700300159) is located within the same Strathfield Plaza Shopping Centre as the Premises, with advertised trading hours of 9:00 am to 10:00 pm Monday to Saturday and 10:00 am to 10:00 pm Sunday. Furthermore, Strathfield Cellars (Licence number LIQP700352426) is only 130 metres away from the Premises (although outside the Strathfield Plaza Shopping Centre), with advertised trading hours of 9:00 am to 6:00 pm Sunday to Wednesday, 9:00 am to 9:00 pm Thursday and Friday and 9:00 am to 8:00 pm Saturday.
28. While reasonable minds may differ as to how the relevant neighbourhood may be defined in geographic terms, the Authority is comfortably satisfied that the BWS outlet within the same Shopping Centre is within the "neighbourhood" of the Premises.
29. In conclusion, the Authority is not satisfied that, in the neighbourhood of this Premises, there is no other take-away liquor service that is "reasonably available" to the public. The Applicant's proposal falls within the restriction provided by section 31(1)(a) of the Act and the Authority *must not* grant the Application.
30. The Application has been refused on this basis.



Philip Crawford  
Chairperson

**Important Information:**

In accordance with section 13A of the *Gaming and Liquor Administration Act 2007* (NSW) a relevant person (the applicant or a person who was required to be notified of the prescribed application and who made a submission to the Authority or the Secretary in respect of the prescribed application) who is aggrieved by this decision may apply to the New South Wales Civil and Administrative Tribunal ("NCAT") for an administrative review under the *Administrative Decisions Review Act 1997* (NSW).

An application to NCAT must be made within 28 days of notice of this decision being published on the liquor and gaming website <https://www.liquorandgaming.nsw.gov.au/independent-liquor-and-gaming-authority/ilga-and-l-and-gnsw-decisions> and be accompanied by the fee prescribed by the regulations.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The NCAT website is at <http://www.ncat.nsw.gov.au/>.

## Schedule 1

### Material before the Authority

1. Letter from PSK Legal ("PSK") on behalf of Kims Club Australia Pty Ltd ("the Applicant") to Liquor and Gaming New South Wales ("LGNSW") dated 2 November 2018 lodging the application form for a packaged liquor licence ("Application"), category B Community Impact Statement and the following documents:
  - (a) Public consultation site notice, police notice and local consent authority notice.
  - (b) Appointment of manager notice.
  - (c) Equifax company extract for Kims Club Australia Pty Ltd as at 4 June 2018.
  - (d) Development approval 0506/197 granted by Strathfield Council on 21 March 2006 for fit out and use of premises as a grocery store.
  - (e) Google geographical map depicting the premises
  - (f) Police certificate, identification and RSA competency documents.
2. One-page submission from Senior Constable Stephanie Crowley, Licensing Officer – Auburn Police Area Command ("Police") dated 21 November 2018, sent via email of the same date, advising no objections.
3. Two-page submission from the commercial competitor, Strathfield Cellars, attached to the official LGNSW submission form dated 10 December 2018 (sent via email of the same date) raising concerns about the Application.
4. A six-paragraph email from Strathfield Cellars dated 18 January 2019 raising further concerns in regards to the Application.
5. Three-paragraph email from Police dated 5 February 2019, responding to an email from LGNSW staff dated 30 January 2019 who requested further information on a 2014 incident involving the illegal sale of liquor.
6. Email correspondence dated 15 February 2019 in which the Applicant provides three photographs of the entrance to Hanaro Mart.
7. Five-page letter from PSK, on behalf of the Applicant, dated 21 February 2019 (sent via email of the same date). In this letter, the Applicant responds to an email from LGNSW staff dated 30 January 2019 and provides the following documents:
  - (a) Certificate of advertising signed by the sole director/secretary of the corporate Applicant, Myung Ae Lee and dated 15 February 2019.
  - (b) Google geographical map depicting the area in which notification was distributed.
  - (c) SAI Global Australian Securities and Investments Commission ("ASIC") current extract for the premises owner Memocorp Australia Pty Ltd as at 20 February 2019.
  - (d) ASIC business name summary for Hanaro Mart as at 02 February 2019.
8. Licence density calculated by LGNSW staff using 2016 Australian Bureau of Statistics ("ABS") population and LGNSW licensed premises information as at 10 June 2019.
9. LGNSW list of licensed premises in Strathfield at 10 June 2019.
10. Two-page letter from PSK, on behalf of the Applicant, to LGNSW dated 19 June 2019 (sent via email of the same date). In this letter, the Applicant responds to an email from LGNSW staff dated 27 March 2019 about section 31 of the *Liquor Act 2007* (NSW) and provides the following documents:
  - (a) Tax Invoice IN000086750 dated 15 June 2019 from Memocorp Australia Pty Ltd.
  - (b) Three survey diagrams of the storage areas created by Hill & Blume Consulting Surveyors.

- (c) A diagram marked "A", which was extracted from the original lease of the premises containing a diagram of a storage area.
11. Bureau of Crime Statistics and Research ("BOCSAR") hotspot maps regarding Strathfield from April 2018 to March 2019 for alcohol related assault, domestic assault, non-domestic assault and malicious damage to property, sourced by licensing staff on 23 June 2019.
  12. BOCSAR Crime data sourced by licensing staff on 23 June 2019, regarding:
    - (a) Count and rate per 100,000 persons for alcohol related domestic assault, alcohol related non-domestic assault, malicious damage and alcohol related disorderly conduct (offensive conduct) for NSW, Strathfield and Strathfield Local Government Area ("LGA") between April 2017 and March 2019.
    - (b) Number and proportion of selected offences flagged as alcohol related by NSW Police for Strathfield LGA and NSW from 2018.
    - (c) Number of selected offences flagged as alcohol related by NSW Police by day and week and time of day for NSW, Strathfield LGA and Strathfield from April 2018 to March 2019.
  13. ABS Socio-Economic Indexes For Areas data based on the 2016 Census for Strathfield and Strathfield LGA, sourced by licensing staff on 23 June 2019.
  14. NSW *Healthstats* data on alcohol attributable deaths in Strathfield LGA and NSW between 2001 and 2016, alcohol attributable hospitalisations in Strathfield LGA and NSW between 2001 and 2017, sourced by licensing staff on 23 June 2019.
  15. Google geographical maps and images of the premises, sourced by licensing staff on 23 June 2019.
  16. Email from PSK, on behalf of the Applicant, dated 26 June 2019 consenting to the CCTV condition proposed by LGNSW staff in their email dated 22 June 2019 and providing an updated plan/diagram of the premises highlighting the licensed premises and liquor sales area boundaries in red.
  17. Email from PSK, on behalf of the Applicant, dated 1 July 2019 responding to an email from LGNSW staff dated 1 July 2019 in regards to trading hours and providing a copy of the Plan of Management last updated 1 July 2019.

## Schedule 2

### Relevant extracts from the *Liquor Act 2007* (NSW)

#### 3 Objects of Act

- (1) The objects of this Act are as follows:
  - (a) to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,
  - (b) to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,
  - (c) to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.
- (2) In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:
  - (a) the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),
  - (b) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,
  - (c) the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

#### 11A Special licence condition—6-hour closure period for licensed premises

- (1) This section applies in relation to:
  - (a) any licence granted on or after 30 October 2008, and
  - (b) any licence in force before that date, but only if an extended trading authorisation granted on or after that date is in force in relation to the licensed premises concerned.
- (2) A licence to which this section applies is subject to the condition that liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours (as determined in accordance with this section) during each consecutive period of 24 hours (***the 6-hour closure period***).
- (3) Except as provided by subsection (4), the 6-hour closure period for any particular licensed premises is the period that is approved for the time being by the Authority.
- (4) In the case of a licence:
  - (a) granted on or after 30 October 2008 but before the date on which this section (as inserted by the *Liquor Legislation Amendment Act 2008*) commenced, or
  - (b) granted by the Local Court (as provided by clause 25 of Schedule 1) at any time after the date on which this section commenced,the 6-hour closure period for the licensed premises is, subject to subsection (5), the period from 4 am to 10 am.
- (5) The Authority may at any time, on application by the licensee or by the Secretary or the Commissioner of Police, or on its own initiative, approve of licensed premises having a different 6-hour closure period than:
  - (a) the period as last approved by the Authority, or
  - (b) the period specified in subsection (4).
- (6) Any such application by the licensee must be accompanied by the fee prescribed by the regulations.
- (7) To avoid doubt, during the 6-hour closure period for any licensed premises:
  - (a) the licensed premises are not authorised to stay open for the retail sale of liquor on the premises, and
  - (b) the licensee is not authorised to sell liquor by retail for consumption away from the licensed premises.
- (8) This section has effect despite any other provision of this Act (in particular, those provisions relating to the standard trading period for licensed premises).

- (9) This section does not, however, apply to the sale or supply of liquor to a resident of licensed premises if the liquor is sold or supplied for consumption in the room in which the resident is residing or staying.
- (10) The regulations may also create exceptions to this section.

## 12 Standard trading period for certain licensed premises

- (1) For the purposes of this Act, the **standard trading period** means:
  - (a) for any day of the week other than a Sunday:
    - (i) the period from 5 am to midnight, or
    - (ii) if the regulations prescribe a shorter period—the period as so prescribed, and
  - (b) for a Sunday:
    - (i) the period from 10 am to 10 pm, or
    - (ii) if the regulations prescribe a shorter period—the period as so prescribed.
- (1A) Despite subsection (1), the **standard trading period** for a small bar is the period from noon to midnight on any day of the week.

**Note.** Small bars are subject to the 6-hour closure period under section 11A.
- (1B) Despite subsection (1) (a), the **standard trading period** for premises to which this subsection applies ends at 10 pm.
- (1C) Subsection (1B) applies to the following premises or part of premises:
  - (a) if the primary purpose of the business carried on on licensed premises to which a packaged liquor licence relates is the sale or supply of liquor for consumption away from the licensed premises—the licensed premises,
  - (b) if the primary purpose of the business carried on on licensed premises to which a packaged liquor licence relates is not the sale or supply of liquor for consumption away from the licensed premises—the part of the premises that is a liquor sales area (within the meaning of section 30) of the licensed premises,
  - (c) if a hotel licence, club licence, on-premises licence or producer/wholesaler licence authorises the licensee to sell liquor for consumption away from the licensed premises—any part of the licensed premises to the extent that it is used for that purpose.
- (2) Any regulation that prescribes a shorter period for the purposes of subsection (1) may:
  - (a) apply to a specified class of licensed premises, and
  - (b) apply in relation to a specified day or days, and
  - (c) in the case of licensed premises on which liquor may be sold or supplied for consumption on the premises as well as for consumption away from the premises—specify different periods for the sale or supply of liquor for consumption on the premises and for the sale or supply of liquor for consumption away from the premises.
- (3) Without limiting subsection (2) (a), a class of licensed premises may be specified by reference to licensed premises that are located in a particular area (however described).

## 29 Authorisation conferred by packaged liquor licence

### (1) Retail sales

A packaged liquor licence authorises the licensee to sell liquor by retail in sealed containers on the licensed premises, for consumption away from the licensed premises only:

- (a) during the standard trading period or such other period as may be authorised by an extended trading authorisation, or
- (b) in the case of any Sunday that falls on 24 December—from 8 am (or such earlier time as may be authorised by an extended trading authorisation) to 10 pm on that day.

### (2) No retail trading on restricted trading days

Despite subsection (1), a packaged liquor licence does not authorise the licensee to sell liquor by retail on a restricted trading day.

(3) **Selling liquor by wholesale or to employees**

A packaged liquor licence also authorises the licensee:

- (a) to sell liquor by wholesale, at any time on the licensed premises, to persons authorised to sell liquor (whether by wholesale or by retail), and
- (b) to sell or supply liquor, at any time on the licensed premises, to the employees of the licensee or of a related corporation of the licensee.

(3A) An extended trading authorisation must not authorise the sale after 10 pm on any day of liquor for consumption away from the licensed premises.

(4) **Tastings**

A packaged liquor licence also authorises the licensee to sell or supply liquor, on the licensed premises and during the trading hours permitted by subsection (1), otherwise than in sealed containers to customers and intending customers for consumption while on the licensed premises, but only for the purposes of tasting.

**30 Liquor sales area required if bottle shop is part of another business activity**

- (1) If the primary purpose of the business carried out on the premises to which a packaged liquor licence relates is not the sale of liquor for consumption away from the licensed premises, liquor may only be sold under the licence in an area of the licensed premises (**the liquor sales area**) that is adequately separated from those parts of the premises in which other activities are carried out.
- (2) The principal activity carried out in any such liquor sales area must be the sale or supply of liquor for consumption away from the licensed premises.

**31 Restrictions on granting packaged liquor licences**

- (1) A packaged liquor licence must not be granted for premises that comprise a general store unless the Authority is satisfied that:
  - (a) in the neighbourhood of the premises concerned, no other take-away liquor service is reasonably available to the public, and
  - (b) the grant of the licence would not encourage drink-driving or other liquor-related harm.
- (2) A packaged liquor licence must not be granted for premises comprising a service station or take-away food shop.
- (3) In this section:

**general store** means a convenience store, mixed business shop, corner shop or milk bar that has a retail floor area of not more than 240 square metres and that is used primarily for the retail sale of groceries or associated small items.

**service station** means premises that are used primarily for the fuelling of motor vehicles involving the sale by retail of petrol, oil or other petroleum products.

**take-away food shop** means premises that are used primarily for the preparation and sale of food for immediate consumption away from the premises (whether or not food is also consumed on the premises).

**40 Licence applications**

- (1) Licence applications are to be made to the Authority.
- (2) An application for a licence may be made by:
  - (a) an individual, or
  - (b) a corporation, or
  - (c) in the case of a club licence—a club (or a person on behalf of a club) that meets the requirements specified in section 10 (1) of the *Registered Clubs Act 1976*.
- (3) An application for a licence may not be made by:
  - (a) an individual who is under the age of 18 years, or
  - (b) a person who is disqualified from holding a licence or who holds a suspended licence, or
  - (c) an individual who is a controlled member of a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2012*.

**Note.** Controlled members are prohibited from applying for licences—see section 27 of the *Crimes (Criminal Organisations Control) Act 2012*.

- (4) An application for a licence must:
- (a) be in the form and manner approved by the Authority, and
  - (b) be accompanied by the fee prescribed by the regulations and such information and particulars as may be prescribed by the regulations, and
  - (c) be advertised in accordance with the regulations, and
  - (d) comply with such other requirements as may be approved by the Authority or prescribed by the regulations.

**Note.** See also section 48 which requires a community impact statement to be provided with certain licence applications.

- (5) If, before an application for a licence is determined by the Authority, a change occurs in the information provided in, or in connection with, the application (including any information provided in accordance with this subsection), the applicant must immediately notify the Authority of the particulars of the change.

#### **45 Decision of Authority in relation to licence applications**

- (1) The Authority may, after considering an application for a licence and any submissions received by the Authority in relation to the application, grant the licence or refuse to grant the licence. The Authority may determine the application whether or not the Secretary has provided a report in relation to the application.
- (2) The Authority may, in such circumstances as the Authority considers appropriate, treat an application for a licence as having been withdrawn.
- (3) The Authority must not grant a licence unless the Authority is satisfied that:
- (a) the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, and
  - (b) practices will be in place at the licensed premises as soon as the licence is granted that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place, and
  - (c) if development consent is required under the *Environmental Planning and Assessment Act 1979* (or approval under Part 3A or Part 5.1 of that Act is required) to use the premises for the purposes of the business or activity to which the proposed licence relates—that development consent or approval is in force.

**Note.** Section 48 also requires the Authority to be satisfied of certain other matters before granting a hotel, club or packaged liquor licence.

- (4) The regulations may also provide mandatory or discretionary grounds for refusing the granting of a licence.
- (5) Without limiting subsection (3) (a), a person is not a fit and proper person to carry on the business or activity to which a proposed licence relates if the Authority has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the person:
- (a) that the person:
    - (i) is a member of, or
    - (ii) is a close associate of, or
    - (iii) regularly associates with one or more members of, a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2012*, and
  - (b) that the nature and circumstances of the person's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the person is granted a licence.
- (5A) Without limiting subsection (3) (a), in determining whether an applicant is a fit and proper

person to carry on the business or activity to which the proposed licence relates, the Authority is to consider whether the applicant:

- (a) is of good repute, having regard to character, honesty and integrity, and
  - (b) is competent to carry on that business or activity.
- (6) The Authority is not, under this or any other Act or law, required to give any reasons for not granting a licence because of subsection (5) to the extent that the giving of those reasons would disclose any criminal intelligence.

#### 48 Community impact

- (1) The object of this section is to facilitate the consideration by the Authority of the impact that the granting of certain licences, authorisations or approvals will have on the local community, in particular by providing a process in which the Authority is made aware of:
- (a) the views of the local community, and
  - (b) the results of any discussions between the applicant and the local community about the issues and concerns that the local community may have in relation to the application.
- (2) In this section:
- relevant application** means any of the following:
- (a) an application for a hotel licence, club licence, small bar licence or packaged liquor licence,
  - (b) an application under section 59 for approval to remove a hotel licence, club licence, small bar licence or packaged liquor licence to other premises,
  - (c) an application for an extended trading authorisation in relation to a hotel licence, club licence, small bar licence or packaged liquor licence,
  - (d) an application for an extended trading authorisation in relation to an on-premises licence (but only if the authorisation will result in trading at any time between midnight and 5 am),
  - (e) an application for an extended trading authorisation in relation to a producer/wholesaler licence (but only if the authorisation will result in retail trading at any time between midnight and 5 am),
  - (f) any particular application (or class of application) that is required by the Authority to be accompanied by a community impact statement,
  - (g) any other application of a kind prescribed by the regulations or made in such circumstances as may be prescribed by the regulations,
- but does not include any application for an extended trading authorisation in relation to a special occasion (as referred to in section 49 (5) (b) or (5A) or 49A (3) (b)).
- (3) A relevant application must be accompanied by a community impact statement.
- (3A) However, a small bar application is not required to be accompanied by a community impact statement if:
- (a) development consent is required under the *Environmental Planning and Assessment Act 1979* to use the premises to which the application relates as a small bar or to sell liquor during the times to which the application relates, and
  - (b) the local police and the Secretary are, no more than 2 working days after the application for the required development consent, or any variation to that application, is made, notified by the applicant of the making of the application for development consent or of the variation to that application.
- (3B) For the purposes of subsection (3A), a **small bar application** means any of the following:
- (a) an application for a small bar licence,
  - (b) an application for approval to remove a small bar licence to other premises,
  - (c) an application for an extended trading authorisation for a small bar,
  - (d) an application to vary an extended trading authorisation for a small bar.
- (3C) An application (other than an application under clause 39 of Schedule 1) for a small bar licence is not, despite subsection (3), required to be accompanied by a community impact statement if:

- (a) the application relates to the same premises as the premises to which a general bar licence relates, and
  - (b) development consent has been obtained under the *Environmental Planning and Assessment Act 1979* to sell liquor during the times to which the application relates and those times are specified in the development consent.
- (3D) Despite subsection (3), an application for a multi-occasion extended trading authorisation (as referred to in section 49B) is not required to be accompanied by a community impact statement if:
- (a) an extended trading authorisation of the kind referred to in section 49 (5) (a) is in force in respect of the licensed premises concerned, or
  - (b) the application is made in respect of club premises that have unrestricted trading hours in accordance with clause 94 of Schedule 2 to the *Registered Clubs Act 1976*.
- (4) The community impact statement must:
- (a) be prepared in accordance with the regulations and any requirements of the Authority, and
  - (b) be in the form approved by the Authority.
- (5) The Authority must not grant a licence, authorisation or approval to which a relevant application relates unless the Authority is satisfied, after having regard to:
- (a) the community impact statement provided with the application, and
  - (b) any other matter the Authority is made aware of during the application process (such as by way of reports or submissions),
- that the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community.
- (6) The regulations may make provision for or with respect to the following:
- (a) the requirements that must be satisfied in relation to the preparation of a community impact statement (including consultation requirements),
  - (b) the matters to be addressed by a community impact statement,
  - (c) the information to be provided in a community impact statement,
  - (d) the criteria for determining the local and broader community for the purposes of a relevant application,
  - (e) any other matter relating to the preparation and content of a community impact statement.
- (7) Without limiting subsection (6), the regulations may provide that the matters to be addressed by a community impact statement are, in the case of an application for an extended trading authorisation in relation to a hotel licence, to include matters relating to gambling activities on the licensed premises during the period that the authorisation is proposed to be in force.